

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STEVEN KEEL, et al.,

Plaintiffs,

v.

GREYSTONE NEVADA, LLC, et al.,

Defendants.

GREYSTONE NEVADA, LLC, a Delaware
limited liability company,

Third Party Plaintiff,

v.

CHAMPION DRYWALL INC. OF
NEVADA, et al.,

Third Party Defendants.

RISING SUN PLUMBING, LLC,

Third Party Plaintiff,

v.

SERVPRO OF SOUTHWEST LAS VEGAS,
et al.,

Third Party Defendants.

2:08-cv-00642-LRH-PAL

ORDER

1 Before the court is Third Party Plaintiff Rising Sun Plumbing's Motion to Enter Default
2 Against Third Party Defendant Enviromold Services (#101¹).

3 Obtaining a default judgment is a two-step process governed by Federal Rule of Civil
4 Procedure 55. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, Rule 55(a) provides,
5 "When a party against whom a judgment for affirmative relief is sought has failed to plead or
6 otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the
7 party's default." Second, after the clerk enters default, a party must seek entry of default judgment
8 under Rule 55(b).

9 In its motion, Rising Sun appears to seek a default judgment against Enviromold. However,
10 in making this request, Rising Sun has circumvented the requirements of Federal Rule of Civil
11 Procedure 55(a) by failing to first obtain an entry of default from the clerk. Accordingly, the court
12 will deny the motion.²

13 IT IS THEREFORE ORDERED that Rising Sun Plumbing's Motion to Enter Default
14 Against Third Party Defendant Enviromold Services (#101) is DENIED.

15 IT IS SO ORDERED.

16 DATED this 5th day of February, 2010.



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19 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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21 ¹Refers to the court's docket entry number.

22 ²The court notes that on September 14, 2009, Enviromold filed an answer. Nonetheless, if Rising Sun
23 continues to seek a default judgment against Enviromold, it must first obtain an entry of default from the clerk.
24 Once the clerk enters default, Rising Sun should then file a motion for default judgment explaining why the
25 court should enter default judgment against Enviromold. *See Warner Bros. Entm't Inc. v. Caridi*, 346 F. Supp.
26 2d 1068, 1071 (C.D. Cal. 2004) (citation omitted) (noting that while entry of default by the clerk is a
prerequisite to an entry of default judgment, "a plaintiff who obtains an entry of default is not entitled to default
judgment as a matter of right."); *see also Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (outlining
factors the court may consider in exercising its discretion to award a default judgment).